

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

ROGELIO BUSTOS

Defendant-Movant.

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Cr. No. C-01-6  
C.A. No. C-07-36

**ORDER**

On January 22, 2007, the Clerk's office received a motion from Defendant Rogelio Bustos ("Bustos"). (D.E. 19.)<sup>1</sup> The document appears to use a form for requesting executive clemency, but Bustos has titled it as a "Motion for Time Reduction By An Inmate in Federal Custody (28 U.S.C. § 2255)." (D.E. 19 at 1.) In addition to referencing clemency in several places, the motion states that the relief sought is a reduction in his prison sentence. (Id.) The brief motion lists a single ground for relief. Specifically, Bustos states:

I would like to get my time reduction because I think the way I make my time I'm redy to change to be and new person. I hope to consider my petition. Thank you and God bless you. [sic]

(D.E. 19 at 2 (errors in original).) The entirety of his motion leads that Court to conclude that Bustos seeks a reduction in his sentence based on post-conviction rehabilitation. As discussed herein, the Court construes his filing as a motion to reduce sentence and the motion is DENIED.

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<sup>1</sup> Docket entries refer to the criminal case, Cr. C-01-6.

## **I. BACKGROUND**

On January 10, 2001, Bustos was charged in a single-count indictment with possession with intent to distribute approximately 8 kilograms of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). (D.E. 1.) On February 27, 2001, he pleaded guilty pursuant to a written plea agreement. (D.E. 5, 6.) Bustos was sentenced on May 8, 2001 to 120 months in the custody of the Bureau of Prisons, to be followed by a five-year supervised release term, and the Court also imposed a \$50 fine and a \$100 special assessment. (D.E. 10, 12.) Judgment was entered against Bustos on May 17, 2001. (D.E. 12.) He appealed, and the Fifth Circuit dismissed the appeal in a per curiam opinion issued December 12, 2001, after finding no nonfrivolous issues for appeal. (D.E. 18.) Bustos did not file a petition for writ of certiorari.

## **II. ANALYSIS**

### **A. Characterization of Motion**

At the outset, the Court notes that *pro se* pleadings are to be construed liberally. United States v. Riascos, 76 F.3d 93, 94 (5th Cir. 1996). Although Bustos in one place references 28 U.S.C. § 2255, he is not challenging his conviction or sentence on any constitutional ground, nor does he assert any cognizable ground for relief under § 2255. Instead, he appears to be asking for a reduction in sentence based on his post-conviction rehabilitation and the way he has served his time. Because of this, the Court is unsure as to whether Bustos intended to file a § 2255 motion. Particularly in light of the Supreme Court's decision in Castro v. United States, 124 S. Ct. 786, 792 (2003), the Court declines to construe his motion as a § 2255 motion. Cf. Castro, 124 S. Ct. at 792 (if a district court recharacterizes a post-conviction motion as a § 2255 motion and fails to provide adequate notice and warning to the defendant of the consequences of the recharacterization, then the motion is not a first

petition for purposes of applying to later motions the restrictions on “second or successive” § 2255 motions).<sup>2</sup> Rather, the Court construes his filing as a motion for reduction in sentence.

### **B. Motion for Reduced Sentence**

Having determined that Bustos’ motion is properly construed as a motion for reduction of sentence, it is clear that he has not stated grounds that entitle him to relief. This Court has authority to modify or correct a previously imposed sentence only in the “limited number of circumstances” set out in 18 U.S.C. § 3582(c). United States v. Bridges, 116 F.3d 1110, 1112 (5th Cir. 1997). These circumstances are limited to the following: (1) when the Bureau of Prisons moves the Court to modify the sentence for reasons outlined in § 3582(c)(1); (2) under Fed. R. Crim. P. 35 (on the government’s motion due to substantial assistance or to correct a clerical mistake within seven days of the date the sentence was imposed); and (3) when the guidelines under which the defendant was sentenced have been subsequently lowered, and a modification of sentence is consistent with the guidelines’ policy statements. See § 3582(c).

Bustos fails to assert grounds for modification that fall into any of the categories above. Rather, he is simply asking for a reduced sentence based on the way he has served his time, and the fact that he is ready to “change” and to be a “new person.” Therefore, the Court does not have authority to alter Bustos’ sentence and his motion is DENIED.

### **III. CONCLUSION**

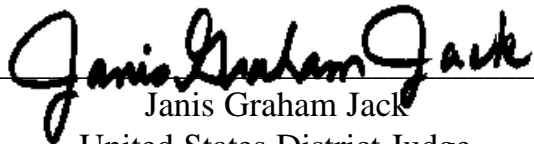
For the foregoing reasons, Bustos’ motion (D.E. 19) is construed as a motion to reduce sentence under 18 U.S.C. § 3582, and is DENIED. Additionally, in light of this Court’s determination that Bustos’ motion is not properly construed as a § 2255 motion, the Clerk is directed to

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<sup>2</sup> Moreover, even if it were construed as a § 2255, Bustos’ motion would likely be barred by the applicable one-year statute of limitations, since his conviction became final in 2002. See 28 U.S.C. § 2255.

administratively close the corresponding civil action opened in connection with Bustos' motion, Civil No. C-07-36.

It is so ORDERED this 8th day of February, 2007.

  
Janis Graham Jack  
United States District Judge